

PROVIDING FOR CONSIDERATION OF H.R. 525, SMALL
BUSINESS HEALTH FAIRNESS ACT OF 2005

JULY 25, 2005.—Referred to the House Calendar and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 379]

The Committee on Rules, having had under consideration House Resolution 379, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 525, the Small Business Health Fairness Act of 2005, under a structured rule. The rule provides one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce. The rule waives all points of order against consideration of the bill.

The rule makes in order the amendment in the nature of a substitute printed in this report, if offered by Representative Kind of Wisconsin or his designee, which shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The Committee is not aware of any points of order against consideration of the bill. The waiver of all points of order against consideration of the bill is prophylactic in nature.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 106

Date: July 25, 2005.

Measure: H.R. 525—Small Business Health Fairness Act of 2005.

Motion by: Mrs. Matsui.

Summary of motion: To make in order and provide the appropriate waivers to the amendment offered by Representatives McCarthy and Woolsey which prohibits employers from joining AHPs if it would mean a reduction in coverage for breast and cervical cancer services.

Results: Defeated 4 to 7.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Gingrey—Nay; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Dreier—Nay.

SUMMARY OF AMENDMENT MADE IN ORDER UNDER THE RULE

Kind/Andrews:

Amendment in the Nature of a Substitute. Requires the Department of Labor to establish a Small Employer Health Benefits Plan (SEHB) similar to the Federal Employees Health Benefits Plan (FEHB). Requires the Secretary to widely disseminate information about SEHB through the media, internet, public service announcements, and other employer and employee directed communications. All employers with fewer than 100 employees during the previous calendar year shall be eligible to apply for coverage under SEHB. Employers must offer coverage to all employees who have completed 3 months of service. Employees working fewer than 30 hours a week are eligible for pro rata coverage. Requires the Secretary to establish an initial open enrollment period and thereafter an annual enrollment period. Requires the Department of Labor to annually contract with state licensed health insurers to offer health insurance coverage in a state. Participating insurers shall remain subject to state laws applicable to the states in which they cover residents. Requires all participating insurers to offer benefits equivalent to or greater than the options offered under the four largest FEHB health plans. Provides that employers are eligible for premium assistance for employees earning below 200% of the poverty level: employers with fewer than 11 employees are eligible for assistance of 50% of premiums; employers with 11–25 employees are eligible for assistance of 35% of premiums; employers with 26–50 employees are eligible for assistance of 25% of premiums. Provides that employees earning less than 200% of poverty are eligible for assistance for premiums above 5% of family income. (One hour)

TEXT OF AMENDMENT IN THE NATURE OF A SUBSTITUTE MADE IN ORDER UNDER THE RULE

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Small Business Affordable Health Insurance Act of 2005”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Establishment of Small Employer Health Benefits Program (SEHBP).

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

“Sec. 801. Establishment of program.

“Sec. 802. Premium assistance for small employers and their employees.

“Sec. 803. Qualified State health pooling arrangements.

“Sec. 804. Establishment of national health pooling arrangement.

“Sec. 805. Coordination and consultation.

“Sec. 806. Public education.

“Sec. 807. Funding for premium assistance and pooling arrangements.

Sec. 3. Institute of Medicine study and report.

SEC. 2. ESTABLISHMENT OF SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP).

(a) **IN GENERAL.**—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

“SEC. 801. ESTABLISHMENT OF PROGRAM.

“(a) **IN GENERAL.**—The Secretary shall establish, in accordance with this part, a program (to be known as the ‘Small Employer Health Benefits Program’ or ‘SEHBP’) providing—

“(1) access to qualified health pooling arrangements (consisting of both qualified State health pooling arrangements and a national health pooling arrangement) under which self-only and family coverage is offered to small employers and their employees, and

“(2) premium assistance to small employers and their employees to assist with the payment of premiums incurred for coverage offered under such arrangements.

“(b) **LIMITATIONS.**—

“(1) **EMPLOYER MUST BEAR 50 PERCENT OF COST.**—Premium assistance shall not be provided under this part with respect to premiums incurred for any period for coverage under a qualified health pooling arrangement unless at least 50 percent of the premiums are paid by the employer.

“(2) **10-YEAR PERIOD OF COVERAGE.**—Premium assistance shall be provided under this part only with respect to coverage for the 10-year period beginning on the date the employer first begins participating in a qualified health pooling arrangement.

“(3) **EMPLOYERS OFFERING OTHER HEALTH BENEFITS.**—In the case of an employer who paid or incurred any expenses for health benefits for the employees of such employer during the first calendar year ending on or after the date of the enactment of this section, premium assistance shall be provided under this part only if the employer begins participating in a qualified health pooling arrangement during the 2-year period beginning on the later of—

“(A) the date of the enactment of this section, or

“(B) the first date that a qualified health pooling arrangement exists which allows such employer to participate.

“(4) PARTICIPATION REQUIREMENTS.—Premium assistance shall not be provided under this part with respect to premiums incurred for any period unless at all times during such period coverage for health benefits under a qualified health pooling arrangement is available to all employees of the employer under similar terms, except that, under regulations of the Secretary—

“(A) coverage under the arrangement may exclude employees with less than 90 days of service with the employer, and

“(B) in the case of an employee serving in a position in which service is customarily less than 1,000 hours per year, the reference in paragraph (1) to ‘50 percent’ shall be deemed a percentage reduced to a percentage that bears the same ratio to 50 percent as the number of hours of service per year customarily in such position bears to 1,000.

“(5) AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred pursuant to a salary reduction arrangement shall be taken into account under subsection (a).

“(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this part—

“(1) SMALL EMPLOYER.—

“(A) IN GENERAL.—The term ‘small employer’ means an employer who normally employed not more than 100 employees on a typical business day during the preceding calendar year (determined under rules similar to the rules applicable under section 601(b)).

“(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the number of employees that it is reasonably expected such employer will normally employ on business days in the current calendar year.

“(C) PREDECESSORS.—The Secretary may prescribe regulations which provide for references in this paragraph to an employer to be treated as including references to predecessors of such employer.

“(D) PERMANENT STATUS AS SMALL EMPLOYER.—In the case of an employer who meets the requirements of this paragraph with respect to the calendar year in which such employer first begins participating in a qualified health pooling arrangement, such employer shall not fail to be treated as a small employer for any subsequent calendar year.

“(2) FAMILY COVERAGE.—The term ‘family coverage’ means coverage for health benefits of the employee and qualified family members of the employee (as defined in section 35(d) of the

Internal Revenue Code of 1986, but without regard to the last sentence of paragraph (1) thereof.

“(3) QUALIFIED HEALTH POOLING ARRANGEMENT.—The term ‘qualified health pooling arrangement’ means a qualified State health pooling arrangement described in section 802 or the national health pooling arrangement described in section 803.

“(4) ENTITIES UNDER COMMON CONTROL.—

“(A) CONTROLLED GROUP OF CORPORATIONS.—All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the total premium assistance (if any) provided to each member of the controlled group and the total premium assistance (if any) provided to its employees shall be its proportionate share of the wages paid to all employees of members of the controlled group. For purposes of this subparagraph, the term ‘controlled group of corporations’ has the meaning given to such term by subsection (a) of section 1563 of the Internal Revenue Code of 1986, except that—

“(i) ‘more than 50 percent’ shall be substituted for ‘at least 80 percent’ each place it appears in subsection (a)(1) of such section 1563, and

“(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of such section 1563.

“(B) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary—

“(i) all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and

“(ii) the total premium assistance (if any) provided to each trade or business and the total premium assistance (if any) provided to its employees shall be its proportionate share of the wages paid to all employees of such trades or business under common control.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

“SEC. 802. PREMIUM ASSISTANCE FOR SMALL EMPLOYERS AND THEIR EMPLOYEES.

“(a) EMPLOYER PREMIUM ASSISTANCE.—

“(1) IN GENERAL.—Pursuant to section 801(a)(2), the Secretary shall provide to small employers who are eligible under paragraph (3) and who elect to provide for coverage of their employees under a qualified health pooling arrangement premium assistance for premiums paid by the employer for such coverage with respect to employees whose individual income (as determined by the Secretary) is at or below 200 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section) for an individual.

“(2) PREMIUM ASSISTANCE SCALED ACCORDING TO SIZE OF EMPLOYER.—The premium assistance provided under paragraph (1) shall be designed so that the premium assistance equals, for any calendar year—

“(A) 50 percent of the portion of the premium payable by the employer for the coverage, in the case of small employers who employ an average of fewer than 11 employees on business days during the preceding calendar year;

“(B) 35 percent of the portion of the premium payable by the employer for the coverage, in the case of small employers who employ an average of more than 10 employees but fewer than 26 employees on business days during the preceding calendar year; and

“(C) 25 percent of the portion of the premium payable by the employer for the coverage, in the case of small employers who employ an average of more than 25 employees but fewer than 51 employees on business days during the preceding calendar year.

“(3) ELIGIBLE EMPLOYERS.—A small employer is eligible under this paragraph if such employer—

“(A) normally employed fewer than 25 employees on a typical business day during the preceding calendar year (determined under rules similar to the rules applicable under section 601(b)), and

“(B) paid such employees during such year at an average annual rate of income (consisting of wages and salary) per employee which was at or below the median income (as determined by the Secretary for the most recent calendar year for which data are available as of the end of the preceding calendar year) for an individual residing in the State in which the employer maintains its principal place of business.

“(b) EMPLOYEE PREMIUM ASSISTANCE.—

“(1) IN GENERAL.—Pursuant to section 801(a)(2), the Secretary shall provide to employees of small employers premium assistance for premiums for coverage under qualified health pooling arrangements paid by such employees in the case of employees whose family income (as determined by the Secretary) is at or below 200 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section) for a family of the size involved.

“(2) AMOUNT OF PREMIUM ASSISTANCE.—Such premium assistance shall be in an amount equal to the excess of the portion of the total premium for coverage otherwise payable by the employee under this part for any period, over 5 percent of the family income (as determined under paragraph (1)(A)) of the employee for such period.

“(3) COORDINATION OF PREMIUM ASSISTANCE.—Notwithstanding paragraph (1), under regulations of the Secretary, the total premium assistance to which any employee may be provided under this subsection for any period shall be reduced (to not less than zero) by the total amount of subsidies for which such employee is eligible for such period under any Federal or State health insurance subsidy program (including a program under title V, XIX, or XXI of the Social Security Act). For purposes of this paragraph, an employee is ‘eligible’ for a subsidy under a program if such employee is entitled to such subsidy

or would, upon filing application therefore, be entitled to such subsidy.

“(4) **AUTHORITY TO EXPAND ELIGIBILITY.**—The Secretary may, to the extent of available funding, provide for expansion of the premium assistance program under this subsection to employees whose family income (as defined by the Secretary) is at or below 300 percent of the poverty line (as determined under paragraph (1)).

“(c) **PROCEDURES.**—The Secretary shall establish by regulation applications, methods, and procedures for carrying out this section, including measures to ascertain or confirm levels of income.

“SEC. 803. QUALIFIED STATE HEALTH POOLING ARRANGEMENTS.

“(a) **DEFINED.**—For purposes of this part, the term ‘qualified State health pooling arrangement’ means an arrangement established by a State which meets the following requirements:

“(1) **COVERAGE PROVIDED BY HEALTH INSURANCE ISSUER.**—The health benefits coverage is provided by a health insurance issuer (as defined in section 733(b)(2)).

“(2) **HEALTH BENEFITS COVERAGE.**—The arrangement provides health benefits coverage that the Secretary determines is substantially similar to the health benefits coverage in any of the four largest health benefits plans (determined by enrollment) offered under chapter 89 of title 5, United States Code.

“(3) **GROUP HEALTH PLAN REQUIREMENTS.**—The health benefits coverage provided under the arrangement meets the requirements applicable to a group health plan under this title and State law.

“(4) **GUARANTEED ISSUE AND RENEWABLE.**—The arrangement does not deny coverage (including renewal of coverage) with respect to employees of any eligible small employer or qualifying family members of such employees on the basis of health status of such employees or family members or any other condition or requirement that the Secretary determines constitutes health underwriting.

“(5) **NO PREEXISTING CONDITION EXCLUSION.**—The arrangement does not permit a preexisting condition exclusion as defined under section 701(b)(1).

“(6) **NO UNDERWRITING; COMMUNITY-RATED PREMIUMS.**—(A) Subject to subparagraph (B), the arrangement does not permit underwriting, through a preexisting condition limitation, differential benefits, or different premium levels, or otherwise, with respect to such coverage for employees or their qualifying family members.

“(B) The premiums charged for such coverage are community-rated for individuals without regard to health status.

“(7) **NO RIDERS.**—The arrangement does not permit riders to the health benefits coverage.

“(8) **ACCESSIBILITY TO ELIGIBLE SMALL EMPLOYERS.**—The arrangement makes such coverage available to an eligible small employer without regard to whether premium assistance is available under section 802 with respect to such employer or its employees.

“(9) **MINIMUM OF TWO PLANS OFFERED UNDER THE ARRANGEMENT.**—The arrangement makes available at least two alternative forms of health benefits coverage.

“(b) LIMITATION ON ENROLLMENT PERIODS.—A qualified State health pooling arrangement may provide limits on the periods of times during which employees may elect coverage offered under the arrangement, but the arrangement shall not be treated as meeting the requirements of this section unless the arrangement provides for at least annual open enrollment periods and enrollment at the time of initial eligibility to enroll and upon appropriate changes in family circumstances.

“(c) QUALIFYING FAMILY MEMBER.—For purposes of this part, the term ‘qualifying family member’ has the meaning given such term in section 35(d) of the Internal Revenue Code of 1986, applied without regard to the last sentence of paragraph (1) thereof.

“(d) STATE DEFINED.—For purposes of this part, the term ‘State’ includes the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Northern Mariana Islands.

“(e) CONSTRUCTION.—Nothing in this section shall be construed as requiring a State to establish or maintain a qualified State health pooling arrangement.

“(f) CREDITABLE COVERAGE FOR PURPOSES OF HIPAA.—Health benefits coverage provided under a qualified State health pooling arrangement under this section (and coverage provided under a National Pooling Arrangement under section 803) shall be treated as creditable coverage for purposes of part 7.

“(g) ANNUAL REPORTS.—

“(1) IN GENERAL.—Each State that offers a qualified State health pooling arrangement under this section in a year shall submit, in a form and manner specified by the Secretary, a report on the operation of the arrangement in that year.

“(2) CONTENTS OF REPORT.—Reports required under paragraph (1) shall include the following:

“(A) A description of the health benefits coverage offered under the arrangement.

“(B) The number of employers that participated in the arrangement.

“(C) The number of employees and qualifying family members of employees who received health benefits coverage under the arrangement.

“(D) The premiums charged for the health benefits coverage under the arrangement.

“(3) CERTIFICATION.—Each State that offers a qualified State health pooling arrangement under this section in a year shall submit, in a form and manner specified by the Secretary, a certification that the arrangement meets the requirements of this part.

“(h) NEGOTIATIONS TO LOWER HEALTH CARE COSTS.—The Secretary and States offering qualified State health pooling arrangements may collectively negotiate for lower prices for medical services, supplies, equipment, and pharmaceuticals for the purpose of lowering the health care costs to employers and employees served by such arrangements.

“(i) COORDINATION WITH STATE REGULATION.—Nothing in this section shall be construed as preempting provisions of State law that provide protections in excess of the protections required under this section. The Secretary shall coordinate with the insurance

commissioners for the various States in establishing a process for handling and resolving any complaints relating to health benefits coverage offered under this part, to the extent necessary to augment processes otherwise available under State law.

“SEC. 804. ESTABLISHMENT OF NATIONAL HEALTH POOLING ARRANGEMENT.

“(a) IN GENERAL.—The Secretary shall provide for the offering and oversight of a national health pooling arrangement to eligible small employers.

“(b) NATIONAL HEALTH POOLING ARRANGEMENT DEFINED.— For purposes of this section, the term ‘national health pooling arrangement’ means an arrangement under which health benefits coverage is offered under terms and conditions that meet the requirements of section 803(a).

“(c) USE OF FEHBP MODEL.—The Secretary shall provide for the national health pooling arrangement using the model of the Federal employees health benefits program under chapter 89 of title 5, United States Code, to the extent practicable and consistent with the provisions of this part. In carrying out such model, the Secretary shall, to the maximum extent practicable, negotiate the most affordable and substantial coverage possible for small employers.

“(d) LIMITATION ON ENROLLMENT PERIODS.—The Secretary may provide limits on the periods of times during which employees may elect coverage offered under the national health pooling arrangement, but the Secretary shall provide for at least annual open enrollment periods and enrollment at the time of initial eligibility to enroll and upon appropriate changes in family circumstances.

“(e) AUTHORIZING USE OF STATES IN MAKING ARRANGEMENTS FOR COVERAGE.—In lieu of the coverage otherwise arranged by the Secretary under this section, the Secretary may enter an arrangement with a State under which a State arranges for the provision of qualifying health insurance coverage to eligible small employers in such manner as the Secretary would otherwise arrange for such coverage.

“SEC. 805. COORDINATION AND CONSULTATION.

“(a) COORDINATION OF STATE AND NATIONAL PROGRAMS.—The Secretary shall provide by regulation for coordination of the offering under this part of health benefits coverage to employees of small employers under State health pooling arrangements and the offering under this part of such coverage to such employees under the national health pooling arrangement.

“(b) CONSULTATION.—In carrying out the provisions of this part, the Secretary shall consult with the Secretary of Health and Human Services and the Director of the Office of Personnel Management.

“SEC. 806. PUBLIC EDUCATION.

“The Secretary shall maintain an ongoing program of public education under which the Secretary shall—

“(1) publicize the national health pooling arrangement established under section 804, and

“(2) assist, and participate with, the States in publicizing the qualified State health pooling arrangements established under section 803.

“SEC. 807. FUNDING FOR PREMIUM ASSISTANCE AND POOLING ARRANGEMENTS.

“(a) PREMIUM ASSISTANCE.—There are authorized to be appropriated to the Secretary such sums as may be necessary to provide for premium assistance under section 802.

“(b) GRANTS TO STATES ESTABLISHING AND OPERATING QUALIFIED STATE HEALTH POOLING ARRANGEMENTS.—The Secretary may provide for grants to States to establish and operate qualified State health pooling arrangements described in section 803. There are authorized to be appropriated to the Secretary such sums as may be necessary to provide such grants.

“(c) FUNDING FOR NATIONAL HEALTH POOLING ARRANGEMENT AND OTHER DUTIES OF THE SECRETARY.—There are authorized to be appropriated to the Secretary such sums as may be necessary to provide for the offering and operation of the national health pooling arrangement under section 804 and to carry out the other duties of the Secretary under this part.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

“Sec. 801. Establishment of program.

“Sec. 802. Premium assistance for small employers and their employees.

“Sec. 803. Qualified State health pooling arrangements.

“Sec. 804. Establishment of national health pooling arrangement.

“Sec. 805. Coordination and consultation.

“Sec. 806. Public education.

“Sec. 807. Funding for premium assistance and pooling arrangements.”.

SEC. 3. INSTITUTE OF MEDICINE STUDY AND REPORT.

(a) STUDY.—The Secretary shall enter into an arrangement under which the Institute of Medicine of the National Academy of Sciences shall conduct a study on the operation of qualified State health pooling arrangements under section 803 of the Employee Retirement Income Security Act of 1974 and the national health pooling arrangement under section 804 of such Act.

(b) MATTERS STUDIED.—The study conducted under subsection (a) shall include the following:

(1) An assessment of the success of the arrangements.

(2) A determination of the affordability of health benefits coverage under the arrangements for employers and employees.

(3) A determination of the access of small employers to health benefits coverage.

(4) A determination of the extent to which part 8 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 provides premium assistance for eligible small employers (and premium assistance for employees of such employers) that provided (or would have provided) health benefits coverage in the absence of such premium assistance.

(5) Recommendations with respect to—

(A) extension of the period for which the premium assistance under part 8 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is available to em-

ployers and employees or an appropriate phase-out of such premium assistance over time;

(B) expansion of categories of persons eligible for such premium assistance;

(C) expansion of persons eligible for health benefits coverage under the arrangements; and

(D) such other matters as the Institute determines appropriate.

(c) REPORT.—Not later than January 1, 2010, the Comptroller General shall submit to the Congress a report on the study conducted under subsection (a).

Amend the title so as to read: “A bill to amend title I of the Employee Retirement Income Security Act of 1974 to encourage small employers to offer affordable health coverage to their employees through qualified health pooling arrangements, to encourage the establishment and operation of these arrangements, and for other purposes.”.

